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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/724,356

12/01/2003

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14540

8051

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7590

09/13/2006

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EXAMINER

EVANS, FANNIE L

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/724,356	<b>Applicant(s)</b> BARWICZ ET AL.	
	<b>Examiner</b> F. L. Evans	<b>Art Unit</b> 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on July 5, 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,8-13 and 44-47 is/are allowed.
- 6) ☒ Claim(s) 14-22,26-31 and 36-43 is/are rejected.
- 7) ☒ Claim(s) 3-7, 23-25 and 32-35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 3-7 are objected to because "said electrical spectral data" in line 3 of claim 3 lacks antecedent basis. Claims 4-7 inherit the problem through dependency. Appropriate correction is required.

### ***New Grounds of Rejection***

The indicated allowability of claims 14-22, 26-31 and 36-43 is withdrawn in view of Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, 1300 OG 142, November 22, 2005. A rejection of claims 14-22, 26-31 and 36-43 based on the interim guidelines appears below.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. § 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 14-22, 26-31 and 36-43 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. The invention set forth in method claims 14-22, 26-31 and 36-43 does not result in the transformation of an article or physical object nor does the invention provide a practical application that produces a useful, concrete and tangible result. Merely performing an analysis of the data sets (lines 6 and 7 of independent claim 14), determining from the correlation a quality of data transmission (lines 5 and 6 of independent claim 26) and estimating a bit-error rate BER of data transmission (line 6 of independent claim 36) would not appear to be sufficient to constitute a tangible result, since the outcome of the

performing, determining and estimating steps has not been used in a disclosed practical application nor made available in such a manner that it's usefulness in a disclosed practical application can be realized. See, Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, 1300 OG 142, November 22, 2005. Attention is directed to section IV. of the guidelines, "DETERMINE WHETHER THE CLAIMED INVENTION COMPLIES WITH THE SUBJECT MATTER ELIGIBILITY OF 35 U.S.C. SEC. 101." In part b. "Practical Application That Produces a Useful, Concrete, and Tangible Result" under section IV, the third sentence states 'In determining whether the claim is for a "practical application," the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather that the final result achieved by the claimed invention is "useful, tangible, and concrete.'"

The dependent claims do not appear to add any real world application required by the guidelines.

#### *Allowable Subject Matter*

Claims 1, 2, 8-13 and 44-47 are allowed over the prior art of record.

Claims 3-7 would be allowable if rewritten to overcome the objection of the claims set forth in this Office action.

Claims 23-25 and 32-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The step of providing an indication signal set forth in line 3 of claims 23, 24, 32 and 34 is considered a tangible result.

Claims 14-22, 26-31 and 36-43 would be allowable if amendment to overcome the rejection of the claims under 35 U.S.C. § 101 set forth in this Office action.

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As to the independent claims, the prior art of record, taken alone or in combination, fails to disclose or render obvious the claimed invention for the reasons set forth on pages 2 and 3 of the previous Office action.

***Fax/Telephone Numbers***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner whose telephone number is (571) 272-2414.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext 77. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**F. L. EVANS**  
**PRIMARY EXAMINER**  
**ART UNIT 2877**

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September 8, 2006